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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. [redacted] 2

NEW WORLD LIFE INSURANCE COMPANY, A CORPORATION,
Petitioner,

v.

THE UNITED STATES.

On Petition for a Writ of Certiorari to the United States Court of Claims.

PETITION FOR REHEARING.

WALTER E. BARTON,
Washington, D. C.,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

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OCTOBER TERM, 1939.

No. 417.

NEW WORLD LIFE INSURANCE COMPANY, A CORPORATION,
Petitioner,

v.

THE UNITED STATES.

On Petition for a Writ of Certiorari to the United States Court of Claims.

PETITION FOR REHEARING.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the petitioner, New World Life Insurance Company, by Walter E. Barton, its attorney of record, and presents this, its petition for rehearing on its petition for a writ of certorari in the above-entitled cause for the reasons hereinafter stated.

Jurisdiction.

The jurisdiction of this Honorable Court is set out on pages 1 and 2 of the petition for a writ of certiorari.

On September 25, 1939, the petition for a writ of certiorari to the United States Court of Claims herein was filed; and on November 22, 1939, the same was denied by this Honorable Court. On December 11, 1939, petitioner filed a motion to extend the time allowed for filing a petition for rehearing; and on December 18, 1939, this Honorable Court entered an order granting petitioner's said motion and extending the time until March 15, 1940. On March 4, 1940, petitioner filed another motion to extend the time allowed for filing a petition for rehearing; and on March 11, 1940, this Honorable Court entered an order granting petitioner's said motion and extending the time until May 1, 1940 within which to file a petition for a rehearing herein.

Questions Presented.

The petition for a writ of certiorari herein raises the following questions:

1. Whether a portion of total salaries paid by petitioner to its officers and cashiers for part-time services rendered in the investment branch of its business and charged as investment expenses may be deducted by petitioner as "investment expenses" under Sec. 203 (a) (5) of the Revenue Acts of 1928 and 1932.

2. Whether petitioner's Disability Reserve, Active Lives and its Disability Reserve, Disabled Lives are "reserve funds" within the meaning of Sec. 203 (a) (2) of the Revenue Acts of 1928 and 1932. (Pp. 8, 9 of Petition for Writ of Certiorari, R. 17.)

The Circuit Court of Appeals for the Sixth Circuit has reversed the Board of Tax Appeals in *Com.* v. *Volunteer State Life Ins. Co.*, No. 7939, on the investment expense question, and that case is now pending in this Court on

petition for a writ of certiorari by the insurance company in No. 920.

The Circuit Court of Appeals for the Fifth Circuit has affirmed the Board of Tax Appeals in *Com.* v. *Pan American Life Ins. Co.*, No. 9175, on the disability reserve question, its decision being in direct conflict with the decision of the Court of Claims in the instant case; and petitioner is informed that the government intends to apply for a writ of certiorari in the *Pan American* case.

Statement of the Case.

The material facts as found by the Court of Claims are as follows:

Investment Expenses

Petitioner is a stock life insurance company organized under the laws of the State of Washington (R. 17). On November 22, 1929, petitioner's board of directors passed a resolution providing that petitioner's disbursements for office salaries paid should be charged between investment expense and insurance expense in the following proportions:

Name	*Investment*	*Insurance*
John J. Cadigan (President)	50%	50%
Edward J. O'Shea (Treasurer)	80%	20%
Graves, Mizer & Graves (General Counsel)	75%	25%
Cashiers in Offices at Seattle, Portland, and San Diego	25%	75%
Cashiers in Offices at Oakland and Los Angeles	50%	50%
All other employees mentioned	100%	

(R. 24.)

In the case of officers, the foregoing percentages represent estimates arrived at by the respective officers, and in the case of cashiers, estimates arrived at by supervising officers in charge of such cashiers, after a careful consideration of the duties theretofore performed by such officers

and cashiers, respectively, and which it was estimated they would perform in the future. The respective officers and cashiers devoted at least as much of their time to the investment department of petitioner's business for the taxable years 1929 to 1932, inclusive, as the percentages set forth in said resolution. (R. 25.)

The salaries paid by petitioner to the officers and cashiers named during the taxable years involved were as follows:

	1929	1930	1931	1932
President	$18,000.00	$18,000.00	$18,000.00	$18,000.00
Treasurer	8,500.00	9,875.00	10,000.00	10,000.00
General Counsel	1,800.00	1,800.00	3,112.50	5,619.08
Seattle Cashier		2,320.64	1,325.28	1,210.00
Oakland Cashier		1,540.00	1,750.00	2,240.00
Portland Cashier		720.00	1,330.00	1,330.00
Los Angeles Cashier		3,215.00	3,200.00	3,200.00
Spokane Cashier			3,200.00	3,980.00

(R. 24.)

During said taxable years 1929 to 1932, inclusive, petitioner charged on its books and deducted in its income returns as investment expenses for part-time services rendered in the investment department amounts equal to the same percentages of total salaries paid to its said officers and cashiers which said resolution provided should be charged to investment expenses. The Commissioner allowed as investment expenses, deductions for total salaries paid as provided in said resolution, where the entire time of the employees was devoted to the investment department; but the Commissioner disallowed as investment expenses, deductions for portions of total salaries paid as provided in said resolution, where only a part of the time of the officers and cashiers was devoted to the investment department. The Court of Claims sustained the Commissioner. (R. 18-25.)

Reserve Funds.

Petitioner writes non-participating life insurance contracts, including combined life, health, and accident insurance the reserve funds of which held for the fulfillment of

such contracts comprise more than 50 per centum of its total reserve funds. Petitioner writes some separate life policies but no separate disability and/or accidental death policies. All of petitioner's policies are written on the level premium plan. (R. 17-26, 29, 30.)

Each policy covering combined life, health, and accident insurance shows the total premium on the face of the policy, which includes the life premium, the disability premium, and the accident premium, the last two of which are also stated separately elsewhere in the policy. The cancelation or termination of the life insurance, automatically cancels or terminates the disability and accident insurance; but the policyholder may discontinue the disability and/or accident insurance at any premium-paying date without discontinuing the life insurance, in which event the total premium shown on the face of the policy is correspondingly reduced. (R. 26, 61, 66.)

Petitioner sets up a separate life reserve out of the life premiums, and a separate accidental death benefit reserve out of the accident premiums, neither of which is in controversy here. Petitioner also sets up a separate reserve out of the disability premiums, commonly known as Reserve for Total and Permanent Disability Benefits, Active Lives, hereinafter referred to as Disability Reserve, Active Lives. In calculating the disability premium, the rate of disability, the rate of mortality, the rate of interest, and the rate of expense are taken into consideration. The Disability Reserve, Active Lives, is computed in accordance with an adopted mortality and disability table (usually Hunter's Combined Table of Mortality and Disability) improved with an assumed rate of interest (usually 3 per cent to 3½ per cent compound interest). This reserve relates to outstanding disability insurance in force with respect to which total and permanent disability has *not* occurred. (R. 27-29.)

When a person carrying disability insurance *becomes* totally and permanently disabled, petitioner transfers a certain amount from its Disability Reserve, Active Lives, to

another reserve, commonly called Reserve for Total and Permanent Disability Benefits, Disabled Lives, hereinafter referred to as Disability Reserve, Disabled Lives. The amount transferred is calculated upon the basis of selected tables of probability of length of disability and expected benefits (such as Hunter's Disabled Lives Mortality Table), improved with an assumed rate of interest (usually 3½ per cent compound interest), mortality also being taken into consideration. When a policyholder becomes totally and permanent disabled, it is not possible to determine the amount of the disability benefits likely to be payable under the policy, due to the fact that disability payments cease upon the death of the disabled persons and also upon the termination of his disability while living. (R. 28, 29, 66.)

Petitioner's Disability Reserve, Active Lives, is computed in accordance with standard combined mortality and disability tables, and its Disability Reserve, Disabled Lives, is computed in accordance with standard mortality and disability tables for disabled lives, as required by the laws of the State of Washington and/or the rules and regulations of the Insurance Commissioner of that state. The petitioner deducted the statutory percentage of the mean of said reserve funds held by it at the beginning and end of the taxable years 1929 to 1932, inclusive, as provided in Section 203 (a) (2) of the Revenue Acts of 1928 and 1932. The Court of Claims held that the deduction was not allowable. (R. 29, 30, 60.)

The regulations from 1921 to 1935 authorized a deduction of the statutory percentage of the mean of the Disability Reserve, Active Lives, and the Disability Reserve, Disabled Lives. Furthermore, Form 1120-L (corporate life insurance income tax return for the years 1921 to 1935, prepared by the Commissioner) contained lines for said deductions. On December 18, 1935, T. D. 4615 amended the regulations applicable to the Revenue Acts of 1921, 1924, 1926, 1928 and 1932, by omitting therefrom the authorization for, but not expressly denying said deductions. The original regulations applicable to each of said Revenue Acts, contain a

specific authorization for a deduction with respect to disability reserves *not required by law* in the case of life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly-premium payment plan. These regulations as amended by T. D. 4615, as well Article 203 (a) (2)-1, Reg. 86 (1934 Act), Art. 203 (a) (2)-1, Reg. 94 (1936 Act) and Art. 203 (a) (2)-1, Reg. 101 (1938 Act), still contained this identical provision with respect to disability reserves *not required by law* in the case of such policies. (Appendix, p. 32, of Petition for Certiorari.)

Reasons for Granting the Writ.

Relative to Investment Expenses

1. On March 12, 1940, the United States Circuit Court of Appeals for the Sixth Circuit in *Com.* v. *Volunteer State Life Ins. Co.*, No. 7939, held that a life insurance company was not entitled to deduct as investment expenses under Sec. 203 (a) (5) of the Revenue Act of 1928 salaries paid to its officers for part time services rendered in the investment department pursuant to a contract entered into between the insurance company and its said officers, where such officers also performed some general services and were paid additional amounts for such general services pursuant to said contract.

Circuit Judge Arant dissented from the majority holding, and petitioner submits that his dissenting opinion, which follows, correctly construes Sec. 203(a)(5) of the Revenue Act of 1928:

> "I cannot agree, however, that the salary item includes general expense. The reasoning of the Court of Claims in New World Life Ins. Co. v. United States, supra, upon which the majority relies, assumes, as its starting point, that, within the meaning of the Act, all the compensation of an officer who renders any general service whatever is necessarily general expense, no matter how much service of a strictly departmental character he may render pursuant to a 'reasonable and

> fair' contract separately made for such service. I regard as sounder the view expressed by the same Court in Sun Life Ins. Co. v. United States, 12 F. Supp. 450 (supra)." (Prentice Hall, 1940 Tax Service, Vol. 4, Par. 62487.)

The insurance company has filed a petition for a writ of certiorari in *Volunteer State Life Insurance Company* v. *Com.*, No. 920, which is now pending in this Court; and petitioner respectfully submits that in the event that this Court should grant certiorari in that case, this Court also should grant the writ in the petitioner's case on the investment expense question.

2. The Court of Claims has rendered a decision in direct conflict with its own previous decision in *Sun Life Ins. Co.* v. *U. S.*, (1935), 81 Ct. Cls. 892, no petition for a writ of certiorari being filed.

In the *Sun Life* case, the Court of Claims held that where a certain percentage of total salaries was paid to officers for part time services rendered in the investment department, the amount paid was deductible as investment expenses under Sec. 245 (a) (5) of the Revenue Act of 1924.[1]

In the *Sun Life* case the Court of Claims held that the proviso regarding assignment of general expenses to investment expenses was applicable only

> "when an attempt was made to improperly increase the amount of investment expenses. The purpose of the proviso so far as we can determine from the language used and its connection with the remainder of the section is to prevent 'padding' of the investment expenses by requiring the insurance companies to make a definite

[1] Sec. 245 (a) (5) of the Revenue Act of 1924 is identical with Sec. 203 (a) (5) of the Revenue Acts of 1928 and 1932 and reads as follows:

> "Investment expenses paid during the taxable year: *Provided*, That if any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 per centum of the book value of the mean of the invested assets held at the beginning and end of the taxable year."

> showing of how much has been expended for investment purposes and how much upon the insurance business."

Clearly the petitioner made such a showing in the instant case, inasmuch as the Court of Claims found that careful consideration was given to the amount of time being rendered and expected to be rendered in the investment department before the resolution was adopted, and that the petitioner's officers and cashiers actually rendered as much time in its investment department as the resolution indicated. (R. 24, 25.) Consequently there was no "padding" of investment expenses by assigning thereto general expenses, which the proviso of Sec. 203 (a) (5) of the Revenue Acts of 1928 and 1932 seeks to prevent.

3. The Court of Claims has rendered a decision contrary to the principle announced by this Court in *Rockford Life Ins. Co.* v. *Com.*, 292 U. S. 382.

In that case this Court held that notwithstanding the generality of the language used in Section 203 (a) (7) of the Revenue Act of 1928 allowing

> "a reasonable allowance for the exhaustion, wear, and tear of property, including a reasonable allowance for obsolescence,"

the deduction should be limited to "depreciation to the property that is used in connection with the company's investment business." This Court said:

> "There is adequate evidence that Congress intended to limit deductions of expenses to those related to the taxed income. *Helvering* v. *Independent Life Ins. Co.*, 292 U. S. 371. In the reports of committees having in charge the Act of 1921, in which first appeared the language under consideration, Section 203 (a) (7), it is said: 'The proposed plan would tax life insurance companies on the basis of their investment income from interest, dividends, and rents, with suitable deductions

for expenses fairly chargeable against such investment income.[2] Section 203 (a) (5) by restricting deductions to investment expenses indicates purpose to exclude those not related to investment income."

If the general language of Section 203 (a) (7), granting an allowance for depreciation of property, is to be construed to refer only to property used in connection with the investment department, clearly, the petitioner is entitled to a deduction for the portion of the salaries paid to its officers and cashiers for services rendered in its investment department.

The Court of Claims found that petitioner's, officers and cashiers devoted at least as great a proportion of their time to its investment department as the percentages of total salaries which were charged to investment expenses. The amount of salaries paid for part-time services in the investment department clearly is investment expenses and not general expenses such as the following: (1) General advertising; (2) salaries of legislative counsel, public relations counsel, and advertising manager; (3) costs of publishing and mailing annual reports and financial statements; (4) traveling expenses of company officials attending national conventions; (5) dues and assessments paid to certain bureaus and associations; (6) costs of books, newspapers, and periodicals not used exclusively in either the investment or underwriting departments; (7) public liability insurance premiums; (8) charitable donations and contributions; (9) license fees paid to various states for the privileges of doing business therein; and (10) cost of insurance department examinations. Inasmuch as the latter expenses are incurred for the benefit of the investment *and* the underwriting departments, they properly should be classified as general expenses and not as investment expenses or underwriting expenses.

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[2] 67th Cong., 1st Sess., Senate Report No. 275, p. 20; House Report No. 350, p. 14.

4. The Court of Claims has decided an important question of Federal law which has not been, but should be settled by this Honorable Court.

It is conceded in this case that the entire salary of an officer or employee is deductible as investment expenses, if he devotes his entire time to the investment department. The question of whether a portion of total salaries paid to officers and employees for part-time services actually rendered in the investment department and actually charged on the books as investment expenses may be deducted by a life insurance company as investment expenses under Sec. 203 (a) (5) of the Revenue Acts of 1928 and 1932 and corresponding provisions of other Acts is an important one to life insurance companies and to the Government. Applying the question to the instant case: May the petitioner deduct as investment expenses 50 per cent of the salary paid to its president for services rendered in its investment department, when the Court of Claims found (R. 24, 25) that petitioner's president devoted at least 50 per cent of his time to the investment department of petitioner's business, and that 50 per cent of his salary was charged on petitioner's books and deducted in its income tax returns as investment expenses?

Best's Life Insurance Reports (1938) show that there are at least 300 life insurance companies doing business in the United States. Furthermore, petitioner has been informed that a considerable number of cases involving this question are now pending in the Treasury Department and the following cases involving this issue are now pending in the courts and the Board of Tax Appeals:

Amicable Life Insurance Company, Court of Claims, No. 44599.

Boston Mutual Life Insurance Company v. *White,* Federal District Court of Mass., Nos. 5332, 5333, 5334.

United Life & Accident Insurance Company, Board of Tax Appeals, Nos. 85321, 93815.

New World Life Insurance Company, Court of Claims, No. 44588.
New World Life Insurance Company, Board of Tax Appeals, No. 98355.

Relative to Reserve Funds

1. The decision of the Court of Claims is in direct conflict with the decision of the United States Circuit Court of Appeals for the Fifth Circuit in *Com.* v. *Pan American Life Insurance Company,* No. 9175.

On April 20, 1940, the Circuit Court of Appeals for the Fifth Circuit in *Com.* v. *Pan-American Life Ins. Co.,* No. 9175, affirmed the Board of Tax Appeals (38 B. T. A. 1430) and held that the term "reserve funds" in Sec. 203 (a) (2) of the Revenue Act of 1932 included reserve funds held for incurred disability benefits, which are identical with petitioner's Disability Reserves, Disabled Lives. The decision of the Circuit Court of Appeals, in so far as it applies to this issue, is printed in the Appendix, p. 15.

2. The decision of the Court of Claims is in direct conflict with the decision of this Court in *Helvering* v. *R. J. Reynolds Tobacco Co.,* 306 U. S. 110.

The Commissioner's Regulations from 1921 to 1935 specifically authorized a deduction with respect to Disability Reserves, Active Lives and Disability Reserves, Disabled Lives. On December 18, 1935 T. D. 4615 amended the Regulations which had been in existence for these fourteen years by omitting the authorization for (but not expressly denying) the deductions with respect to said disability reserves. (Appendix p. 32, Petition for Certiorari.) The Court of Claims held that the Amended Regulations, T. D. 4615, promulgated in 1935, were applicable to petitioner's years 1929 to 1932, inclusive. In the petition for a writ of certiorari, (p. 10) petitioner maintained that the decision of the Court of Claims in this respect was contrary to *Helvering* v. *R. J. Reynolds Tobacco Co.,* 306 U. S. 110. The Circuit Court of Appeals in *Com.* v. *Pan American Life Ins. Co., supra,* said:

"The attempt of the Commissioner to apply 1935 Treasury Regulations to tax returns made for the year 1933 falls within the prohibition against retroactive application mentioned in *Helvering* v. *R. J. Reynolds Tobacco Co.*, 306 U. S. 110."

3. The Court of Claims has decided an important question of Federal law, which has not been but should be decided by this Court.

Best's Life Insurance Reports (1938) show that there are at least 290 life insurance companies writing disability insurance in the United States. The question therefore, is of great importance to these 290 insurance companies. The importance of the question to the government is evidenced by the fact that the Commissioner has appealed from the decisions of the Board of Tax Appeals in three cases which the Board has decided; viz., *Com.* v. *Pan American Life Insurance Company, supra,* which has been decided adversely to the government, and

Com. v. *Monarch Life Ins. Co.*, Nos. 3470, 3475 (1st Circuit) argued on April 16, 1940, and now awaiting decision;

Com. v. *Oregon Mutual Life Ins. Co.*, No. 9318 (9th Circuit) argued on April 3, 1940, and now awaiting decision.

PRAYER.

WHEREFORE, petitioner prays that its petition for rehearing of its petition for a writ of certiorari herein may be granted; and that upon reconsideration, this Honorable Court may vacate its order entered herein on November 22, 1939, and enter a new order granting the petition for a writ of certiorari in this cause.

Respectfully submitted,

WALTER E. BARTON,
Investment Building,
Washington, D. C.,
Counsel for Petitioner.

Certificate of Counsel.

The undersigned, counsel for petitioner herein, hereby certifies that the foregoing petition for rehearing is presented in good faith and not for delay.

WALTER E. BARTON,
Counsel for Petitioner.

Dated, Washington, D. C.
April 30, 1940.

Appendix.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 9175

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

versus

PAN-AMERICAN LIFE INSURANCE COMPANY,
Respondent,

And

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petitions for Review of Decision of the United States Board of Tax Appeals (District of Louisiana).

(April 20, 1940)

Before Sibley, Hutcheson, and Holmes
Circuit Judges.

Holmes, Circuit Judge: These two petitions for review were consolidated for purposes of the hearing but the questions presented are distinct, and will be dealt with separately in this opinion.

In the first case, the question is whether reserves required by state law to be maintained by life insurance companies for the payment of incurred disability benefits are reserves required by law within the meaning of Section 203

(a) (2) of the Revenue Act of 1932. The board held that they were. 38 B. T. A. 1430.

The taxpayer is an insurance company incorporated under the laws of Louisiana. During the tax year 1933, it did business in Louisiana, Oklahoma, Indiana, and Illinois. More than fifty per centum of its total reserve funds was held for the fulfillment of its life-insurance and annuity contracts. Some of its policies provided for the waiver of premiums in event of the total and permanent disability of the insured, so long as such disability continued; others provided for the payment of monthly disability benefits. The laws of Oklahoma and Illinois required the insurer to maintain reserves for unpaid and unresisted claims incurred under these disability provisions. The taxpayer maintained such reserves computed according to a standard method. They were established only for the policies under which the insured had sustained total and permanent disability, and the continuance of benefits was subject to termination either by death or recovery from disability. In its tax return, the insurer computed the mean of such reserve funds held at the beginning and end of the taxable year, and deducted three and three-fourths per centum thereof, which the commissioner disallowed.

Section 201 (a) of the Revenue Act of 1932 defines a life insurance company to be a company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which, held for the fulfillment of such contracts, comprised more than fifty per centum of its total reserve funds.

This question has been before the Board of Tax Appeals four times, and before the Court of Claims once.[1] Those portions of the law which are applicable to this case were originally enacted in 1921, and have been re-enacted in each succeeding revenue act, including that of 1939. The administrative interpretation, as evidenced by Treasury Regulation 62, Art. 681, promulgated in 1922, and unchanged in this aspect until 1935, provided that reserves

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[1]. Equitable Life Assurance Society v. Commissioner, 33 B.T.A. 708; Monarch Life Ins. Co. v. Commissioner, 38 B. T. A. 716; Pan American Life Ins. Co. v. Commissioner, supra; Oregon Mutual Life Ins. Co. v. Commissioner (Jan. 4, 1939); New World Life Ins. Co. v. U. S., 26 Fed. Supp. 444.

for amounts incurred but not due for total and permanent disability benefits were considered reserves as contemplated by the law. No life insurance company's right to the deduction was ever protested until 1934, when, after the decision of the Court of Claims in the case of *Continental Assurance Company* v. *United States*, 8 Fed. Supp. 474, the Commissioner concluded that such deductions should not be allowed. It will thus be seen that for thirteen years, including 1933, the administrative interpretation supported the taxpayer's contention. During this period, the Congress re-enacted the provisions without change, indicating that the administrative interpretation was not inconsistent with the legislative intent.[2] The attempt of the commissioner to apply 1935 treasury regulations to tax returns made for the year 1933 falls within the prohibition against retroactive application mentioned in *Helvering* v. *R. J. Reynolds Tobacco Co.*, 306 U. S. 110.

Since the applicable provisions of the revenue act specifically define life insurance companies to include those issuing casualty contracts, and permit the reserve funds required by law held by such companies to be partially deductible, and since there is no express provision excluding casualty reserves from the coverage of the deduction, the most that can be said in favor of the construction urged upon us by the commissioner, in the light of the administrative interpretation, is that the statute is sufficiently ambiguous to give rise to a reasonable doubt as to its meaning, which we are required to resolve in favor of the taxpayer.[3]

The nature of the reserve in dispute is persuasive to the conclusion we have reached. Incurred disability reserves were created only after the disability had arisen. They were not fixed obligations. They were payable only in the future, and were contingent upon the continuance of both life and disability. Not being completely accrued, the extent of the probable liability thereunder was computed, and the amount of the reserve created was fixed, by tables of probability based upon approved rates of termination of such liability. The method of computation so

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[2]. U. S. v. Dakota-Montana Oil Co., 288 U. S. 459.

[3]. Old Colony Trust Company v. Commissioner, 284 U. S. 151; White v. Aronson, 302 U. S. 16.

employed is wholly consistent with that used for establishing amounts of premiums and reserves for ordinary life-insurance and annuity contracts, and is wholly inconsistent with reserves created to defray accrued and definite liabilities payable in the future. This is the distinguishing feature between the case at bar and those relied upon by the commissioner, which dealt with the reserves for the payment of accrued obligations for fixed amounts created by contract. The latter are mere solvency reserves having no relation to true insurance risks.[4]

The purpose of Congress in allowing these deductions is obvious. By the provision enacted in 1921, life insurance companies for the first time were taxed upon their investment income only, and no deduction was allowed for claims paid to policy holders or for net additions made to reserve funds, as insurance companies classed "other than life" were permitted by the act to do. Apparently, Congress recognized that life insurance companies were required by law to maintain numerous reserves comprising a large proportion of their total assets. Being thus deprived of potential investment returns, and being required to credit such reserves with compound interest annually, the deduction was allowed as a necessary compensation for earnings foregone by compliance with the law.[5] Due to its classification for income tax purposes as a life insurance company, the taxpayer is denied the right to claim the deductions on its casualty reserves to which casualty companies are entitled. Therefore, to deny it the deduction here claimed would have the unjust effect of declaring these reserves to be under the law for the penalties imposed by it, and outside the law for the benefits flowing from it.

A further inconsistency in the position we are urged to take is evidenced by the provisions of Section 203 (a) (2) of the Revenue Act of 1932, which expressly permits percentage deductions upon casualty reserves held by life insurance companies on certain types of policies, even though not required by law. It is unreasonable to believe

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[4]. McCoach v. Insurance Company of North America, 244 U. S. 585; United States v. Boston Insurance Company, 269 U. S. 197; Helvering v. Inter-Mountain Life Insurance Company, 294 U. S. 686; Helvering v. Illinois Insurance Company, 299 U. S. 88.

[5] Cf. Mass. Mutual Life Ins. Co. v. U. S., 56 F. (2) 897.

that Congress would discriminate between companies doing the same kind of casualty business, as the interpretation would require, when the conclusion we have reached is entirely in harmony with the theory of equal benefits. Our conclusion is that the reserve for incurred disability benefits held by the taxpayer was a fund required by law within the meaning of the statute.

* * * * *

The decision of the Board of Tax Appeals in each instance is

AFFIRMED.
OAKLEY F. DODD, Clerk,

A True Copy:
Teste:

By E VENDLING Deputy
Clerk of the United States Circuit Court of
(Seal) Appeals for the Fifth Circuit.